

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9
10

11 LINDA ANDREWS,) No. EDCV 08-0658-RC
12 Plaintiff,)
13 v.) OPINION AND ORDER
14 MICHAEL J. ASTRUE,)
15 Commissioner of Social Security,)
16 Defendant.)
17

18 Plaintiff Linda Andrews filed a complaint on May 23, 2008,
19 seeking review of the Commissioner's decision denying her application
20 for disability benefits, and on October 17, 2008, the Commissioner
21 answered the complaint. On December 29, 2008, the parties filed a
22 joint stipulation.
23

24 **BACKGROUND**

25 **I**

26 On January 25, 2005 (protective filing date), plaintiff filed an
27 application for disability benefits and disabled widow's benefits
28 under Title II of the Social Security Act ("Act"), claiming an

1 inability to work since September 28, 2003. Certified Administrative
2 Record ("A.R.") 78-81. The plaintiff's application was initially
3 denied on December 19, 2005, A.R. 35-39, and was denied again on
4 March 16, 2006, following reconsideration. A.R. 43-48. The plaintiff
5 then requested an administrative hearing, A.R. 51, which was held
6 before Administrative Law Judge John W. Belcher ("the ALJ") on
7 September 11 and December 18, 2007. A.R. 418-80. On January 23,
8 2008, the ALJ issued a decision finding plaintiff is not disabled.
9 A.R. 9-22. The plaintiff appealed the decision to the Appeals
10 Council, which denied review on April 29, 2008. A.R. 5-8.

11 12 II

13 The plaintiff was born on January 22, 1952, and is currently 57
14 years old. A.R. 79, 425. She has a high school education, completed
15 two or three years of college, A.R. 300, 351, 428, and previously
16 worked as a receptionist, a data entry clerk, a hand packer and a
17 certified nurses' assistant. A.R. 130-37, 165, 460-65.

18
19 Between May 7, 2002, and January 13, 2005,¹ plaintiff received
20 mental health treatment at Kaiser Permanente, where she was diagnosed
21 with depression, not otherwise specified, and prescribed Trazodone and
22 Zoloft.² A.R. 193-206. On June 6, 2004, plaintiff was treated in the

23
24 ¹ Although plaintiff has both physical and mental
25 complaints, plaintiff challenges only the ALJ's assessment of the
26 medical evidence relating to her mental complaints.

27 ² Trazodone, also called Desyrel, "is prescribed for the
28 treatment of depression." The PDR Family Guide to Prescription
Drugs, 198, 690 (8th ed. 2000). Zoloft "is prescribed for major
depression – a persistently low mood that interferes with

1 emergency room at St. Mary Medical Center, where Franz Bolowich, M.D.,
2 diagnosed her with major depression, treated her with medication, and
3 released her to return home. A.R. 259-65.

4
5 Between June 12 and June 15, 2005, plaintiff was hospitalized at
6 Arrowhead Regional Medical Center after having a cerebrovascular
7 accident, which caused her to have right-sided weakness and numbness.
8 A.R. 243, 327-29, 396-98. On June 18, 2005, psychiatrist Ehab Hanna,
9 M.D., examined plaintiff and attempted to conduct a comprehensive
10 psychiatric evaluation; however, plaintiff cried throughout the
11 interview, and Dr. Hanna could not test her cognitive abilities. A.R.
12 235-39. Nevertheless, Dr. Hanna diagnosed plaintiff as having a
13 recurrent, severe, major depressive disorder, without psychotic
14 features, and opined plaintiff's Global Assessment of Functioning
15 ("GAF") was 20.³ A.R. 238. Dr. Hanna also opined plaintiff was not
16 able to accept instructions from supervisors or interact with
17 coworkers or the public. Id. Dr. Hanna concluded plaintiff's
18 condition was treatable and the likelihood of recovery was guarded,
19 although her condition could slightly improve in the next twelve
20 months. Id.

21 //

22
23 everyday living." Id. at 763.

24 ³ A GAF of 20 means "[s]ome danger of hurting self or
25 others (e.g., suicide attempts without clear expectation of
26 death; frequently violent; manic excitement) or occasionally
27 fails to maintain minimal personal hygiene (e.g., smears feces)
28 or gross impairment in communication (e.g., largely incoherent or
mute)." American Psychiatric Ass'n, Diagnostic and Statistical
Manual of Mental Disorders, 34 (4th ed. (Text Revision) 2000).

1 On November 23, 2005, Kim Goldman, Psy. D., a clinical
2 psychologist, examined plaintiff, administered psychological testing,
3 and diagnosed her with malingering. A.R. 300-04. Dr. Goldman found
4 plaintiff did not make an adequate effort on the tasks presented her,
5 she "appeared to volitionally present herself with a severely
6 deficient fund of information[,]" poor judgment and poor understanding
7 of social convention, and the psychological test results were not
8 valid because plaintiff did not make an adequate effort. A.R. 302-03.
9

10 On August 10, 2006, Samuel Wilson, M.D.,⁴ opined plaintiff is
11 extremely limited in her ability to carry out very short and simple
12 instructions, perform activities within a schedule, maintain regular
13 attendance, be punctual within customary tolerances, and sustain an
14 ordinary routine without special supervision, and markedly limited in
15 her ability to: remember locations and work-like procedures;
16 understand and remember very short and simple instructions; maintain
17 attention and concentration for extended periods; work in coordination
18 with or in proximity to others without being distracted by them; make
19 simple work-related decisions; interact appropriately with the general
20 public; ask simple questions or request assistance; accept
21 instructions and respond appropriately to criticism from supervisors;
22 get along with co-workers or peers without distracting them or
23 exhibiting behavioral extremes; maintain socially appropriate behavior
24 and adhere to basic standards of neatness and cleanliness; respond
25 appropriately to changes in the work setting; be aware of normal
26

27 ⁴ Dr. Wilson treated plaintiff at the High Desert Community
28 Care Clinic between August 18, 2005, and August 2, 2007. A.R.
289-96, 361-74.

1 hazards and take appropriate precautions; and set realistic goals or
2 make plans independently of others. A.R. 376-77. Dr. Wilson also
3 opined plaintiff is not a malingerer and her impairments would cause
4 plaintiff to miss three or more work days a month. A.R. 377.

5
6 On April 28, 2007, Dr. Goldman reexamined plaintiff, attempted to
7 administer psychological testing, and diagnosed plaintiff with
8 malingering and a depressive disorder, not otherwise specified. A.R.
9 351-57. Dr. Goldman again found plaintiff did not make an adequate
10 effort on the tasks presented her, the psychological test results were
11 not valid, and "[h]er performance reflects that she is attempting to
12 simulate cognitive impairment." A.R. 353-54. Dr. Goldman explained:

13
14 [plaintiff's] functional limitations were unable to be
15 accurately assessed due to malingering. Scores on the
16 Bender Gestalt test placed her functioning in the average to
17 low average range and reflect the absence of organic
18 impairment. Bender Gestalt scores also significantly differ
19 from scores obtained on other measures at the time of this
20 evaluation. Adaptive functioning was inconsistent with
21 obtained scores. [Plaintiff] drives a car and reportedly
22 holds a drivers license. She manages her own money. She
23 "works word puzzles" and reads books. At the time of her
24 evaluation she independently read and completed a history
25 questionnaire. She provided detailed historical
26 information. These abilities are not consistent with
27 intelligence and memory scores in the extremely low range as
28 measured by the [Wechsler Adult Intelligence Scale - Third

1 Edition] and [Wechsler Memory Scale - Third Edition]. The
2 [plaintiff] has a history of malingering on a previous
3 evaluation . . . and current measures of malingering
4 indicate that she is attempting to simulate cognitive
5 impairment.

6
7 A.R. 355.

8
9 At the administrative hearing, William Soltz, Ph.D., a clinical
10 psychologist, opined plaintiff has a depressive disorder, not
11 otherwise specified, A.R. 70-71, 429-37, although Dr. Goldman's
12 consultative examinations showed gross inconsistencies and invalid
13 test results due to plaintiff's clear malingering. A.R. 431. Indeed,
14 Dr. Soltz stated that given the extremely low scores on memory
15 malingering testing, see A.R. 303, plaintiff would have to have known
16 the right answer and deliberately picked the wrong one. A.R. 431.
17 Dr. Soltz further testified that, "[e]ven with a stroke" or a "severe
18 psychiatric disturbance," a test subject should do better than
19 plaintiff did on the memory malingering test. A.R. 432. Dr. Soltz
20 opined plaintiff is "mildly" restricted in her activities of daily
21 living, has "mild" difficulty with social functioning and maintaining
22 concentration, persistence or pace, and there have been no episodes of
23 decompensation. Id. Dr. Soltz concluded plaintiff is not limited
24 cognitively but should not work in a job with high-intensity
25 interpersonal interactions or where hypervigilance is needed, or at
26 heights or around dangerous machinery. A.R. 435-36.

27 //

28 //

DISCUSSION

III

This Court, pursuant to 42 U.S.C. § 405(g), has the authority to review the Commissioner's decision denying plaintiff's application for disability benefits to determine whether the Commissioner's findings are supported by substantial evidence and whether he used the proper legal standards in reaching his decision. Vasquez v. Astrue, 572 F.3d 586, 591 (9th Cir. 2009); Vernoff v. Astrue, 568 F.3d 1102, 1105 (9th Cir. 2009). "In determining whether the Commissioner's findings are supported by substantial evidence, [this Court] must review the administrative record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998); Holohan v. Massanari, 246 F.3d 1195, 1201 (9th Cir. 2001). "Where the evidence can reasonably support either affirming or reversing the decision, [this Court] may not substitute [its] judgment for that of the Commissioner." Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007), cert. denied, 128 S. Ct. 1068 (2008); Vasquez, 572 F.3d at 591.

The claimant is "disabled" for the purpose of receiving benefits under the Act if she is unable to engage in any substantial gainful activity due to an impairment which has lasted, or is expected to last, for a continuous period of at least twelve months. 42 U.S.C. § 423(d)(1)(A); 20 C.F.R. § 404.1505(a). "The claimant bears the burden of establishing a prima facie case of disability." Roberts v. Shalala, 66 F.3d 179, 182 (9th Cir. 1995), cert. denied, 517 U.S. 1122 (1996); Smolen v. Chater, 80 F.3d 1273, 1289 (9th Cir. 1996). Here,

1 plaintiff's disability insured status expired on June 30, 2006, A.R.
2 14, and she must prove she was either permanently disabled or subject
3 to a condition which became so severe as to disable her prior to that
4 date. Lingenfelter v. Astrue, 504 F.3d 1028, 1033-34 (9th Cir. 2007);
5 Greger v. Barnhart, 464 F.3d 968, 970 (9th Cir. 2006).

6
7 The Commissioner has promulgated regulations establishing a five-
8 step sequential evaluation process for the ALJ to follow in a
9 disability case. 20 C.F.R. § 404.1520. In the **First Step**, the ALJ
10 must determine whether the claimant is currently engaged in
11 substantial gainful activity. 20 C.F.R. § 404.1520(b). If not, in
12 the **Second Step**, the ALJ must determine whether the claimant has a
13 severe impairment or combination of impairments significantly limiting
14 her from performing basic work activities. 20 C.F.R. § 404.1520(c).
15 If so, in the **Third Step**, the ALJ must determine whether the claimant
16 has an impairment or combination of impairments that meets or equals
17 the requirements of the Listing of Impairments ("Listing"), 20 C.F.R.
18 § 404, Subpart P, App. 1. 20 C.F.R. § 404.1520(d). If not, in the
19 **Fourth Step**, the ALJ must determine whether the claimant has
20 sufficient residual functional capacity despite the impairment or
21 various limitations to perform her past work. 20 C.F.R. §
22 404.1520(f). If not, in **Step Five**, the burden shifts to the
23 Commissioner to show the claimant can perform other work that exists
24 in significant numbers in the national economy. 20 C.F.R. §
25 404.1520(g). Moreover, where there is evidence of a mental impairment
26 that may prevent a claimant from working, the Commissioner has
27 supplemented the five-step sequential evaluation process with

28 //

1 additional regulations.⁵ Maier v. Comm'r of the Soc. Sec. Admin.,
 2 154 F.3d 913, 914 (9th Cir. 1998) (per curiam).

3
 4 Applying the five-step sequential evaluation process, the ALJ
 5 found plaintiff has not engaged in substantial gainful activity
 6 between the alleged onset of disability to "an undetermined date in
 7 2006 when she testified she resumed working[.]" (Step One). The ALJ
 8 then found plaintiff has the following severe impairments: controlled
 9 diabetes mellitus; controlled hypertension; controlled high
 10 cholesterol; status post mild right-sided cerebrovascular accident;
 11 mild degenerative arthritis in both hips; right meniscus degeneration;
 12 ulnar sensory neuropathy; mild cervical and lumbar spine degenerative
 13 disc disease; and a depressive disorder, not otherwise specified (Step
 14 Two);⁶ however, she does not have an impairment or combination of

16 ⁵ First, the ALJ must determine the presence or absence of
 17 certain medical findings relevant to the ability to work. 20
 18 C.F.R. § 404.1520a(b)(1). Second, when the claimant establishes
 19 these medical findings, the ALJ must rate the degree of
 20 functional loss resulting from the impairment by considering four
 21 areas of function: (a) activities of daily living; (b) social
 22 functioning; (c) concentration, persistence, or pace; and (d)
 23 episodes of decompensation. 20 C.F.R. § 404.1520a(c)(2-4).
 24 Third, after rating the degree of loss, the ALJ must determine
 25 whether the claimant has a severe mental impairment. 20 C.F.R. §
 26 404.1520a(d). Fourth, when a mental impairment is found to be
 27 severe, the ALJ must determine if it meets or equals a Listing.
 28 20 C.F.R. § 404.1520a(d)(2). Finally, if a Listing is not met,
 the ALJ must then perform a residual functional capacity
 assessment, and the ALJ's decision "must incorporate the
 pertinent findings and conclusions" regarding plaintiff's mental
 impairment, including "a specific finding as to the degree of
 limitation in each of the functional areas described in [§
 404.1520a(c)(3)]." 20 C.F.R. § 404.1520a(d)(3), (e)(2).

⁶ In reaching this conclusion, the ALJ found:

1 impairments that meets or equals a Listing. (Step Three). Finally,
 2 the ALJ determined plaintiff can perform her past relevant work as a
 3 receptionist; therefore, she is not disabled. (Step Four).

4 5 IV

6 A claimant's residual functional capacity ("RFC") is what she can
 7 still do despite her physical, mental, nonexertional, and other
 8 limitations. Mayes v. Massanari, 276 F.3d 453, 460 (9th Cir. 2001);
 9 see also Valentine v. Comm'r Soc. Sec. Admin., 574 F.3d 685, 689 (9th
 10 Cir. 2009) (the RFC is "a summary of what the claimant is capable of
 11 doing"). Here, the ALJ found plaintiff retains the RFC to perform a
 12 limited range of sedentary work,⁷ as follows:

13
 14 [plaintiff can] lift[] and/or carry[] 10 pounds occasionally
 15 or frequently; push[] and/or pull[] consistent with lifting
 16 and/or carrying; stand[] and/or walk[] two hours in an
 17 eight-hour workday; sit[] for six hours in an eight[-]hour
 18 workday; . . . and she must be able to change positions at

19
 20 The [plaintiff] has mild restrictions in her activities
 21 of daily living; mild to moderate difficulties in
 22 social functioning; mild difficulties with regard to
 concentration, persistence or pace; and she has
 experienced no episodes of decompensation.

23 A.R. 16.

24 ⁷ "Sedentary work involves lifting no more than 10 pounds
 25 at a time and occasionally lifting or carrying articles like
 26 docket files, ledgers, and small tools. Although a sedentary job
 27 is defined as one which involves sitting, a certain amount of
 walking and standing is often necessary in carrying out job
 28 duties. Jobs are sedentary if walking and standing are required
 occasionally and other sedentary criteria are met." 20 C.F.R. §
 404.1567(a).

1 will. [Plaintiff] can occasionally climb stairs, balance,
2 bend, stoop, crouch, kneel, crawl or walk on uneven ground,
3 and is precluded from climbing ladders, ropes, or scaffolds.
4 The [plaintiff] can do frequent fine manipulation or
5 fingering and occasional torquing or twisting with her right
6 hand. She should limit her work to activities not requiring
7 safety operations and/or hypervigilance, and avoid all
8 exposure to fumes, odors, dusts, toxins, gases, and poor
9 ventilation as well as hazardous or fast machinery and
10 unprotected heights. The [plaintiff] should avoid intense
11 interpersonal contact with co-workers, supervisors or the
12 public.

13
14 A.R. 16. However, plaintiff contends the ALJ, in making the RFC
15 determination, failed to properly consider plaintiff's mental
16 limitations and improperly rejected a statement from plaintiff's
17 friend, Risa Maxey. There is no merit to these claims.

18
19 **a. Mental Limitations:**

20 Plaintiff conclusorily contends that "even though the ALJ found a
21 severe depressive disorder, he failed to properly consider the
22 plaintiff's mental limitations in his [RFC] holding." Jt. Stip. at
23 9:19-21 (emphasis in original). However, the ALJ specifically
24 included the mental limitations that plaintiff avoid "hypervigilance"
25 and "intense interpersonal contact with co-workers, supervisors or the
26 public[,]" A.R. 16, and this finding is supported by substantial
27 evidence in the record, including the opinions of Drs. Goldman and
28 Soltz. Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001);

1 Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir.
2 1999). Since plaintiff does not suggest any further mental
3 limitations the ALJ ignored, the Court finds no merit to this claim.
4

5 **b. Lay Witness Testimony:**

6 "Lay testimony as to a claimant's symptoms is competent evidence
7 that an ALJ must take into account, unless he or she expressly
8 determines to disregard such testimony and gives reasons germane to
9 each witness for doing so." Lewis v. Apfel, 236 F.3d 503, 511 (9th
10 Cir. 2001); Valentine, 574 F.3d at 694. Third party function reports
11 are such competent lay evidence, and are "an important source of
12 information about a claimant's impairments." Regennitter v. Comm'r of
13 the Soc. Sec. Admin., 166 F.3d 1294, 1297 (9th Cir. 1999); Schneider
14 v. Comm'r of the Soc. Sec. Admin., 223 F.3d 968, 975 (9th Cir. 2000).
15

16 On May 18, 2005, plaintiff's friend, Risa Maxey, completed a
17 third-party function report about plaintiff, stating, among other
18 things, that plaintiff lived in Maxey's house and "often complains of
19 arm, hand [and] shoulder pain[,] "occasionally needs help with can
20 openers, and jars[,] "doesn't have strength in [her] arms/hands" and
21 has difficulty lifting, reaching, standing, stair climbing, using her
22 hands, "writing or attempting to use the computer[,] turning door
23 knobs, manipulating keys, utilizing household appliances, and doing
24 everyday chores. A.R. 138-45.
25

26 The ALJ "considered the claimant's subjective complaints in
27 arriving at the claimant's [RFC]" and found "the statements from
28 [plaintiff's] friends . . . credibly establish no different

1 conclusions" than the RFC determination. A.R. 21. In so doing, the
2 ALJ found plaintiff's complaints about her pain and other symptoms
3 "not persuasive or credible[,] "id., and plaintiff does not challenge
4 this finding. The ALJ also noted "the record includes statements by
5 third parties suggesting that the [plaintiff] may be misrepresenting
6 the degree of limitation present." Id. In particular, Maxey
7 telephoned the Social Security Administration and stated plaintiff was
8 no longer living with her, and that she requested that plaintiff leave
9 because plaintiff "was abusing their rules and was very manipulative."
10 A.R. 150. Under these circumstances, the ALJ properly assessed
11 Maxey's opinion. Valentine, 574 F.3d at 694; Carmickle v. Comm'r,
12 Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008).

13
14 V

15 "At Step Four, claimants have the burden of showing that they can
16 no longer perform their past relevant work." Pinto v. Massanari,
17 249 F.3d 840, 845 (9th Cir. 2001); Webb v. Barnhart, 433 F.3d 683, 686
18 (9th Cir. 2005). To determine whether a claimant has the RFC "to
19 perform [her] past relevant work, the [ALJ] must ascertain the demands
20 of the claimant's former work and then compare the demands with [her]
21 present capacity." Villa v. Heckler, 797 F.2d 794, 797-98 (9th Cir.
22 1986); Marcia v. Sullivan, 900 F.2d 172, 177 n. 6 (9th Cir. 1990).
23 "This requires specific findings as to the claimant's [RFC], the
24 physical and mental demands of the past relevant work, and the
25 relation of the residual functional capacity to the past work."
26 Pinto, 249 F.3d at 845 (citing SSR 82-62). "A claimant must be able
27 to perform her past relevant work either as actually performed or as
28 generally performed in the national economy." Lewis v. Barnhart,

1 281 F.3d 1081, 1083 (9th Cir. 2002); Pinto, 249 F.3d at 845.

2
3 At the administrative hearing, the ALJ asked vocational expert
4 Corinne Porter the following hypothetical question:

5
6 I want you to assume an individual who at all times prior to
7 May of '06 was between 50 and 55 and who after January of
8 '07 would have been over 55, has a high school education and
9 some college, including training as a [Certified Nurse's
10 Assistant] and a certificate in computer word processing and
11 data entry. That individual would be able to lift no more
12 than 10 pounds occasionally, less than 10 pounds frequently;
13 could occasionally push and pull, well, the push and pull
14 should be consistent with the lifting and carrying, but
15 could only be done occasionally with the right upper
16 extremity. The person could stand or walk for two hours out
17 of an eight-hour day, sit for six hours out of an eight-hour
18 day, would be able to change positions at will. The person
19 could climb stairs occasionally, but could not climb
20 ladders, ropes, and scaffolding, could otherwise balance,
21 bend or stoop, kneel, crouch, or crawl on an occasional
22 basis with the need to avoid concentrated exposure to
23 extremes of heat and cold, could not work with vibratory
24 tools and cannot work around hazardous or fast-paced
25 machinery. **The individual should not do jobs that require**
26 **safety operations or hypervigilance and should not be in**
27 **jobs involving intense interpersonal contact.** Would that
28 individual be able to do any of the claimant's past relevant

1 work?

2
3 A.R. 465-66 (emphasis added). In response, the vocational expert
4 testified plaintiff could work as a data entry operator and a
5 receptionist. A.R. 466. The ALJ then asked the vocational expert:

6
7 [I]f [we] take all of those but we modify it further by
8 limiting her torquing with the right upper extremity to
9 occasional and also to just frequent fine manipulation with
10 the right upper extremity, would she still be able to do her
11 past relevant work?

12
13 Id. The vocational expert responded that such an individual could
14 work as a receptionist, but could not do data entry. Id.

15
16 Plaintiff contends the ALJ's Step Four determination is not
17 supported by substantial evidence because the ALJ "failed to consider
18 the actual mental requirements of plaintiff's past relevant work as a
19 receptionist[,]" as required under Social Security Ruling ("SSR")⁸ 82-
20 62.⁹ Jt. Stip. at 3:12-6:8, 8:26-9:7. The Court disagrees. The

21
22 ⁸ Social Security Rulings constitute the Social Security
23 Administration's interpretations of the statute it administers
24 and of its own regulations. Massachi v. Astrue, 486 F.3d 1149,
25 1152 n.6 (9th Cir. 2007); Ukolov v. Barnhart, 420 F.3d 1002, 1005
26 n.2 (9th Cir. 2005). However, they do not have the force of law,
27 Chavez v. Dep't of Health & Human Servs., 103 F.3d 849, 851 (9th
28 Cir. 1996), although once published, they are binding upon ALJs
and the Commissioner. Holohan v. Massanari, 246 F.3d 1195, 1202-
03 n.1 (9th Cir. 2001).

⁹ SSR 82-62 requires any decision finding the claimant has
the capacity to perform her past relevant work include "[a]

ALJ's Step Four determination that plaintiff can perform her past relevant work as a receptionist is based on the vocational expert's testimony about the nature of the work of a receptionist as generally performed and the vocational expert's opinion that a person of plaintiff's age, education, work experience and the RFC the ALJ set forth could perform the work of a receptionist, Dictionary of Occupational Titles ("DOT") no. 237.367-038.¹⁰ A.R. 21-22, 464-66. The ALJ can comply with the requirements of SSR 82-62 by relying on a vocational expert's opinion,¹¹ Doyal v. Barnhart, 331 F.3d 758, 761 (10th Cir. 2003); see also Tackett v. Apfel, 180 F.3d 1094, 1101 (9th Cir. 1999) ("The vocational expert . . . 'translates . . . factual scenarios into realistic job market probabilities' by testifying on the record to what kinds of jobs the claimant still can perform and whether there is a sufficient number of those jobs available in the claimant's region or in several other regions of the economy to support a finding of 'not disabled.'" (citation omitted)), and that opinion is substantial evidence supporting the ALJ's Step Four determination that plaintiff can perform her past relevant work.

finding of fact as to the physical and mental demands of the past job/occupation." SSR 82-62, 1982 WL 31386, *1, *4 (S.S.A.).

¹⁰ The DOT is the Commissioner's primary source of reliable vocational information. Johnson v. Shalala, 60 F.3d 1428, 1434 n.6 (9th Cir. 1995).

¹¹ In any event, since plaintiff does not "point out any way in which the [RFC] assigned to [her] by the ALJ was in fact inconsistent with the . . . demands of plaintiff's past relevant work as a [receptionist,] . . . any error by the ALJ at step four was harmless." Awad v. Astrue, 2009 WL 2242356, *8 (C.D. Cal.); see also Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) ("A decision of the ALJ will not be reversed for errors that are harmless.").

1 The ALJ found plaintiff was limited to "frequent fine
2 manipulation or fingering and occasional torquing or twisting with her
3 right hand." A.R. 16. The plaintiff contends, however, that the ALJ
4 failed to consider these limitations in making the Step Four
5 determination that she can perform her past relevant work, arguing the
6 job of receptionist requires "frequent handling," which is
7 inconsistent with "occasional torquing or twisting." Jt. Stip. at
8 14:11-15:11, 16:6-10; see also U.S. Dep't of Labor, Selected
9 Characteristics of Occupations Defined in the Revised Dictionary of
10 Occupational Titles ("Selected Characteristics"), 336 (1993)
11 (receptionist position requires frequent handling and occasional
12 fingering). Yet, the plaintiff cites no authority for her contention
13 that "frequent handling" is inconsistent with her limitation to
14 "occasional torquing or twisting with her right hand." To the
15 contrary, the vocational expert testified that "handling and torquing
16 are not the same" and while the receptionist position requires
17 frequent handling, it does **not** require more than occasional (from zero
18 to 1/3 of the time) torquing. A.R. 472-74; see also Selected
19 Characteristics, Appendix C, C-3 (1993) (defining "occasionally" as
20 "[a]ctivity or condition exists up to 1/3 of the time"). Therefore,
21 plaintiff's contention is without merit.

22
23 Finally, plaintiff contends the ALJ's hypothetical question to
24 the vocational expert was incomplete because it failed to set out her
25 mental limitations. Jt. Stip. at 16:12-17:24, 18:10-14. There is no
26 merit to this claim. Once again, plaintiff fails to identify those
27 mental limitations she refers to, and "[t]he hypothetical that the ALJ
28 posed to the [vocational expert] contained all of the limitations that

1 the ALJ found credible and supported by substantial evidence in the
2 record. The ALJ's reliance on testimony the [vocational expert] gave
3 in response to the hypothetical therefore was proper." Bayliss v.
4 Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005); Stubbs-Danielson v.
5 Astrue, 539 F.3d 1169, 1175-76 (9th Cir. 2008). Therefore, plaintiff
6 has not her burden of proving she is unable to perform her past
7 relevant work.

8
9 **ORDER**

10 IT IS ORDERED that: (1) plaintiff's request for relief is denied;
11 and (2) the Commissioner's decision is affirmed, and Judgment shall be
12 entered in favor of defendant.

13
14 DATE: September 14, 2009

/s/ Rosalyn M. Chapman
ROSALYN M. CHAPMAN
UNITED STATES MAGISTRATE JUDGE

15
16 R&R-MDO\08-0658.mdo
9/14/09
17
18
19
20
21
22
23
24
25
26
27
28